

## **REMARKS**

In response to the above-identified Office Action, Applicants seek reconsideration in view of the following remarks. In this Response, Applicants amend claims 9 and 17-21. Applicants do not cancel or add any new claims. Accordingly, claims 1-9 and 12-27 remain pending in the Application.

### **I. Claim Objections**

Claims 17-20 are objected to for informal reasons. Specifically, the Patent Office recommended that the preamble of claims 17-20 be amended. Applicants have amended the preamble of claims 17-20 consistent with the Patent Office's recommendation. Accordingly, Applicants respectfully request withdrawal of the objection to claims 17-20.

### **II. Claims Rejected Under 35 U.S.C. § 101**

Claims 9, 12-16, and 21-27 stand rejected under 35 U.S.C. § 101 as allegedly not falling within one of the four statutory categories of invention. Specifically, the Patent Office alleges that claims 9, 12-16, and 21-27 are not 1) tied to a particular machine; or 2) do not transform underlying subject matter to a different state or thing. Applicants respectfully traverse the rejection, at least in view of the amendments to independent claims 9 and 21.

The preamble of claims 9 and 21 each recite "a method of maintaining quality of service in a computer network" (emphasis added). Moreover, claims 9 and 21 each recite that the various steps are performed by a first node or a second node within the computer network. Therefore, Applicants submit that claims 9 and 21 (and claims 12-16, and 22-27) are tied to particular machine and, therefore, fall within at least one of the statutory categories under 35 U.S.C. § 101. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 9, 12-16, and 21-27.

### **III. Claims Rejected Under 35 U.S.C. § 103**

#### **A. Sawatari in view of Abaye**

Claims 1-3, 7-9, 15-18, and 21-27 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Application Publication No. 2002/0004841 filed by Sawatari ("*Sawatari*") in view

of U.S. Patent No. 7,260,060 issued to Abaye et al. ("*Abaye*"). Applicants respectfully traverse the rejection.

To render a claim obvious, the cited references must teach or suggest each and every element of the rejected claim (*see* MPEP § 2143). Among other elements, amended claim 1 defines an apparatus comprising a first processor "further configured to replace the one of the plurality of admission policies with a different one of the plurality of admission policies based on the different severity level" (emphasis added). Applicants submit that the combination of *Sawatari* and *Abaye* fails to teach or suggest at least these elements of claim 1.

In making the rejection, the Patent Office characterizes *Sawatari* as teaching or suggesting the elements of: "wherein the first processor is further configured to update the one of the plurality of admission policies based on the transmitted severity level" (Paper No./Mail Date 20090402, page 4, citing paragraph [0050] of *Sawatari*). Applicants respectfully disagree with the Patent Office's characterization of paragraph [0050] of *Sawatari*.

Paragraph [0050] of *Sawatari* states, in its entirety: "the time stamp storage section stores the time stamp that show the time (day and hour) the real-time data was generated or updated" (parenthetical in original). Applicants submit that this teaching or suggestion is unrelated to replacing an admission policy with another admission policy based on the condition of a network path.

As discussed above, the time stamp storage section stores the time at which "real-time data was generated or updated." Paragraph [0033] of *Sawatari* discloses that the real-time data referenced by paragraph [0050] of *Sawatari* is "movie image data and audio data" from external apparatus. Therefore, Applicants submit that paragraph [0050] of *Sawatari* discloses a section of an RTP header that stores a timestamp indicating when movie image data and audio data was generated or updated, and not to replacing an admission policy with another admission policy based on the condition of a network path as defined in claim 1.

In addition, Applicants submit that, in view of the Patent Office's admission that *Sawatari* "fails to disclose having a plurality of call admission policies associated with one of a plurality of severity levels within its network," *Sawatari* can only disclose a single call admission policy. As such, any processor disclosed in *Sawatari* cannot teach or suggest a processor "configured to update

the one of the plurality of admission policies,” as alleged by the Patent Office, because there is not a second call admission policy with which to update the processor. That is, without a second call admission policy, the first call admission policy cannot be updated.

At least for the reasons discussed above, *Sawatari* fails to teach or suggest each and every element of claim 1. The Patent Office relies on the disclosure in *Abaye* to cure the defects of *Sawatari*; however, Applicants submit that *Abaye* fails to cure such elements.

When rejecting claim 1, the Patent Office does not cite *Abaye* as teaching or suggest the elements of a first processor “further configured to replace the one of the plurality of admission policies with a different one of the plurality of admission policies based on the different severity level,” as recited in claim 1. Moreover, in reviewing *Abaye*, Applicants are unable to discern any sections of *Abaye* teaching or suggesting such elements. Therefore, *Abaye* fails to cure the defects of *Sawatari*.

The failure of the combination of *Sawatari* and *Abaye* to teach or suggest each and every element of claim 1 is fatal to the obviousness rejection. Therefore, claim 1 is not obvious over *Sawatari* in view of *Abaye*. Accordingly, Applicants respectfully request withdrawal of the rejection of independent claim 1.

Claims 2-3 and 7-8 depend from claim 1 and include all of the elements thereof. Therefore, Applicants submit that claims 2-3 and 7-8 are not obvious over *Sawatari* in view of *Abaye* at least for the same reasons as claim 1, in addition to their own respective features. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 2-3 and 7-8.

Regarding the rejection of independent claims 9, 17, and 21, Applicants submit that claims 9, 17, and 21 recite the elements of “replacing the first call admission policy with a second call admission policy if the first severity level and the second severity level are different severity levels,” “replace the first call admission policy with a second call admission policy if the previous severity level and the current severity level are different severity levels,” and “replacing the first call admission policy with a second call admission policy if the first severity level and the second severity level are different severity levels,” respectively, similar to the elements of a processor “configured to replace the one of the plurality of admission policies with a different one of the plurality of admission policies based on the different severity level,” as recited in claim 1.

Therefore, Applicants submit that claims 9, 17, and 21 are not obvious over *Sawatari* in view of *Abaye* at least for the same reasons as claim 1, in addition to their own respective features. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 9, 17, and 21.

Claims 15-16 and 27 depend from claim 9, claim 18 depends from claim 17, and claims 22-26 depend from claim 21 and include all of the elements of their respective independent claims. Therefore, Applicants submit that claims 15-16, 18, and 22-27 are not obvious over *Sawatari* in view of *Abaye* at least for the same reasons as claims 9, 17, and 21, in addition to their own respective features. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 15-16, 18, and 22-27.

#### **B. Sawatari in view of Abaye and Calvignac**

Claims 26 and 27 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Sawatari* in view of *Abaye* and U.S. Patent No. 5,557,608 issued to Calvignac et al. ("*Calvignac*"). Applicants respectfully traverse the rejection.

To render a claim obvious, the cited references must teach or suggest each and every element of the rejected claim (see MPEP § 2143). Claims 26 and 27 depend from claims 21 and 9, respectively, and include all of the elements thereof. In making the rejection, the Patent Office characterizes *Sawatari* and *Abaye* similar to the characterization discussed above with respect to the rejection of claims 21 and 9. Applicants have discussed above the failure of *Sawatari* and *Abaye* to teach or suggest each and every element of claims 21 and 9, and submit that such discussion is equally applicable to claims 26 and 27 via their respective dependencies from claims 21 and 9. Therefore, *Sawatari* and *Abaye* fail to teach or suggest each and every element of claims 26 and 27. The Patent Office relies on the disclosure in *Calvignac* to cure the defects of *Sawatari* and *Abaye*; however, Applicants submit that *Calvignac* fails to cure such defects.

In making the rejection, the Patent Office does not characterize *Calvignac* as disclosing the elements of: "applying, by the first node, the second call admission policy to regulate the transmission of packets of data from the first node to the second node based on a type of data included within the packets of data and without using QoS data from the network," as recited in claim 26 (via claim 21) and "applying, by the first node, the second call admission policy to regulate

the transmission of packets of data from the first node to the second node based on a type of data included within the packets of data,” as recited in claim 27 (via claim 9). Moreover, in reviewing *Calvignac*, Applicants are unable to discern any sections of *Calvignac* disclosing such elements. Therefore, *Calvignac* fails to cure the defects of *Sawatari* and *Abaye*.

The failure of the combination of *Sawatari*, *Abaye*, and *Calvignac* to teach or suggest each and every element of claims 26 and 27 is fatal to the obviousness rejection. Therefore, claims 26 and 27 are not obvious over *Sawatari* in view of *Abaye* and *Calvignac*. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 26 and 27.

#### **C. Sawatari in view of Abaye and Khan**

Claims 4, 12, and 19-20 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Sawatari* in view of *Abaye* and U.S. Patent No. 6,400,954 issued to Khan et al. (“*Khan*”). Applicants respectfully traverse the rejection.

To render a claim obvious, the cited references must teach or suggest each and every element of the rejected claim (*see* MPEP § 2143). Claims 4, 12, and 19-20 depend from claims 1, 9, and 17, respectively, and include all of the elements thereof. In making the rejection, the Patent Office characterizes *Sawatari* and *Abaye* similar to the characterization discussed above with respect to the rejection of claims 1, 9, and 17. Applicants have discussed above the failure of *Sawatari* and *Abaye* to teach or suggest at least the elements of a processor “configured to replace the one of the plurality of admission policies with a different one of the plurality of admission policies based on the different severity level,” as recited in claim 1 and similarly recited in claims 9 and 17, and submit that such discussion is equally applicable to claims 4, 12, and 19-20 via their respective dependencies from claims 1, 9, and 17. Therefore, *Sawatari* and *Abaye* fail to teach or suggest each and every element of claims 4, 12, and 19-20. The Patent Office relies on the disclosure in *Khan* to cure the defects of *Sawatari* and *Abaye*; however, Applicants submit that *Khan* fails to cure such defects.

The Patent Office characterizes *Khan* as disclosing “different service classes in a network with different threshold levels” (Paper No./Mail Date 20090402, page 6, citations omitted). The Patent Office does not characterize *Khan* as disclosing the element of a processor “configured to

replace the one of the plurality of admission policies with a different one of the plurality of admission policies based on the different severity level,” as recited in claim 4 (via claim 1) and similarly recited in claim 12 (via claim 9) and claims 19-20 (via claim 17). Moreover, in reviewing *Khan*, Applicants are unable to discern any sections of *Khan* disclosing such elements. Therefore, *Khan* fails to cure the defects of *Sawatari* and *Abaye*.

The failure of the combination of *Sawatari*, *Abaye*, and *Khan* to teach or suggest each and every element of claims 4, 12, and 19-20 is fatal to the obviousness rejection. Therefore, claims 4, 12, and 19-20 are not obvious over *Sawatari* in view of *Abaye* and *Khan*. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 4, 12, and 19-20.

#### **IV. Allowable Subject Matter**

Applicants note with appreciation the Examiner’s indication that claims 5-6 and 13-14 would be allowable if re-written in independent form including all of the limitations of the base claim and any intervening claims. However, in view of the discussion above, Applicants believe that claims 5-6 and 13-14 are in condition for allowance as they currently stand.

**CONCLUSION**

In view of the foregoing, it is believed that all claims now pending are in condition for allowance. A Notice of Allowance is earnestly solicited at the earliest possible date. If the Patent Office believes that a telephone conference would be useful in moving the application forward to allowance, the Patent Office is encouraged to contact the undersigned at (480) 385-5060 or [jgraff@ifllaw.com](mailto:jgraff@ifllaw.com).

If necessary, the Commissioner is hereby authorized to charge payment or credit any overpayment to Deposit Account No. 50-2091 for any fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,  
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